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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,151	02/04/2004	Ronald Louis Costa	COSTA-PA-1	1853

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SUITE 153
10 NORTH CALVERT STREET
BALTIMORE, MD 21202

EXAMINER

LOWEN, ALYSSA

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,151

Applicant(s)

COSTA, RONALD LOUIS

Examiner

Alyssa M. Lowen

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/4/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/30/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Priority

2. Applicant's claim for domestic priority under 35 U.S.C. 119 (e) is acknowledged. The provisional application (Application No. 60444998) upon which priority is claimed meets the necessary requirements and the non-provisional application was filed within the required one-year time frame.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the upwardly protruding stem for anchoring a doll stand must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim makes reference to an upwardly protruding stem on the shelf of a wall rack in order to affix a doll stand, however, it is unclear as to what is meant by the stem feature since it is not further clarified in the claims or discussed in the specification. The claim and the specification are inconsistent with one another making the scope of the invention difficult to ascertain.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Lebowitz (4378889). Lebowitz shows a horizontal bracket that can be secured to a wall or counter (Fig. 6 and 10 respectively) with a plurality of recesses to which a plurality of shelf members can be secured (Fig. 6) and each shelf having an upwardly protruding stem (Fig. 1).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1, 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy (5601471) in view of Flicker (4141176). Kennedy discloses the basic inventive concept of single-legged support for a doll with a shaped base (10) having a leg support rod attached perpendicularly through the center of gravity of the base (20), substantially as claimed with the exception of a contoured leg support with a frontal opening, an annular collar and lower recess. Flicker shows this feature to be old in the doll stand art. It would have been obvious to one of ordinary skill in the art at the time of invention from the teaching of Flicker to modify the doll platform of Kennedy by adding a leg support having a hollow contoured sleeve (54), an annular shaped collar (66) above a frontal opening with a recess below said opening (Fig. 1) to the leg support rod in order to eliminate the doll having to be clipped directly to the rod which could damage the leg of the doll. In regard to claim 3, Flicker shows that the leg support provides an unobstructed view of a length of the doll's leg (Fig. 1). Regarding claim 8, attaching the leg support to the rod will put the doll in line with the center of gravity passing through the stand.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy in view of Flicker as applied to claim 1 above, and further in view of Fung (D442652). The modified device of Kennedy discloses the invention substantially as claimed except for a 360-degree collar. However, Fung shows a 360-degree collar being used in a doll stand to prevent a doll from falling out of the stand, showing this feature to be old in the doll stand art. It would have been obvious to one of ordinary skill in the art at the time of

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invention to add the 360-degree collar to the modified device of Kennedy to ensure that the doll's leg could not become detached from the leg support.

12. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy in view of Flicker. The modified device of Kennedy discloses each and every structural element of the doll stand set forth in claim 1 as described above. With regard to claims 4 and 5, the modified device teaches a doll stand, but is silent as to the material and manufacturing process of the doll stand. The claimed phrases "wherein the shaped base and leg support are integrally molded in one piece of a molded plastic" and "integrally molded of transparent plastic" are being treated as a product by process limitation; that is, that the doll stand is made by integrally molding out of plastic. With regard to claims 6 and 7, the modified device teaches a doll stand, but is silent as to how the stand is assembled. The claimed assemblies are also being treated as a product by process limitation. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 U.S.C 103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113. Therefore, even though the modified device of Kennedy is silent as to the material, process and assembly of a doll stand, it appears that the modified device would be the same or similar as that claimed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Lowen whose telephone number is (571) 272-2684. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Jessica Harrison can be reached on 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AML


Patent Examiner